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MEMORANDUM OF LAW

DATE: April 6, 2001

TO: Chris Cameron, Chief of Staff, Council District 1

FROM: City Attorney

SUBJECT: Possible Conflict of Interest Related to Councilmember's Investment Interest in Chevron

QUESTION PRESENTED

In light of his investment interest in Chevron, may Councilmember Peters vote on a conditional use and commercial development permit for a Chevron gas station in Sorrento Hills?

SHORT ANSWER

Yes. Although Councilmember Peters has a financial interest in Chevron, it is not reasonably foreseeable there will be a material financial effect on Chevron as a result of the Council's decision on a conditional use and commercial development permit for the proposed Chevron station in Sorrento Hills. He is, therefore, not disqualified from participating in that decision.

BACKGROUND FACTS

Councilmember Peters' wife owns a separate property trust, and the trust owns shares of stock in Chevron Oil Company (Chevron) valued at over \$2,000, but less than \$25,000. Chevron Oil Company is currently ranked Number 20 on the Fortune 500 list of the largest companies in the United States, according to the Fortune web site.

Chevron is the owner and developer of a proposed new retail facility including a 12 pump gas station, 3,000 square foot mini mart and car wash located on a 2½ acre site in Sorrento Hills. The proposed station is considered a standard gas station for Chevron, designed to provide services to the neighboring area. On December 13, 2000, a hearing officer approved the proposed project, subject to several conditions of approval. That decision was appealed to the Planning Commission by the Sorrento Hills Community Planning Board. On February 1, 2001, the Planning Commission voted unanimously to deny the Sorrento Hills Community Planning Board's appeal and uphold the previous decision of the hearing officer approving the project, subject to several modifications, including limiting the hours of operation, and requiring some physical modifications to the proposed facility.

Both Chevron and the Sorrento Hills Community Planning Board are appealing the decision of the Planning Commission, and the City Council is expected to hear that appeal on or about April 17, 2001. The City Manager is recommending to the Council that it deny both appeals and approve the conditional use and commercial development permit, subject to the conditions specified by the Planning Commission. You have asked if Councilmember Peters' indirect investment interest in Chevron disqualifies him from participating in the Council discussions and voting on this matter.

ANALYSIS

I. Political Reform Act of 1974

This matter is governed by the Political Reform Act of 1974 [Act], which is codified at California Government Code sections 81000-91015. The Act was adopted to ensure that public officials perform their duties in an impartial manner, free from bias caused by their financial interests. Cal. Gov't Code § 81001.

A public official has a financial interest in a decision if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the official, a member or his or her immediate family, or on any of six economic interests delineated in California Government Code section 87103. Those six interests are investments in business entities; interests in real property, income received in the previous twelve months, positions in business entities, and gifts received in the previous twelve months. Investments, income and gifts must meet threshold dollar values set by the Act before they become potential sources of disqualification. Cal. Gov't Code § 87103.

The Councilmember is a public official within the meaning of the Act, and Chevron's appeal of the Planning Commission decision to the City Council is a governmental decision within the meaning of the Act. Cal. Code Regs. tit. 2, §§ 18701(a), 18702.1(a). Additionally, the Chevron stock held in a separate property trust by Councilmember Peters' wife is an economic

interest for purposes of California Government Code section 87103, because it is valued at over \$2,000, and because the definition of “indirect investment” in that statute includes an investment owned by the spouse of the public official.

To determine whether the decision on the Chevron station appeal will have a material financial effect on the financial interest in question, the applicable materiality threshold must be identified. The threshold depends on the type of economic interest, and whether or not the interest is directly or indirectly involved in the governmental decision. It should be noted that the determination which must be made is whether the governmental decision has a material financial effect on the business entity that the official has an investment in, not the effect on the official’s investment.

A business entity in which an official has a financial interest is considered to be directly involved in a governmental decision when the business entity initiated the proceeding, is named as a party in the proceeding, or is the subject of the proceeding. Cal. Code Regs. tit. 2, § 18704.1(a). Because Chevron is a party in this proceeding, and is also one of the parties initiating the appeal, Chevron is directly involved in the governmental decision in this case.

The materiality standard that applies to a business entity directly involved in the governmental decision is that of title 2, section 18705.1(a) of the California Code of Regulations. Generally, when a business entity is directly involved in a governmental decision, there is a presumption that the decision will have a material financial effect on the entity, and the official with an economic interest in the business is automatically disqualified. Cal. Code Regs. tit. 2, section 18705.1(b)(1). However, an exception to that rule applies when the official’s interest in the business entity in an investment interest valued at less than \$25,000. Cal. Code Regs. tit. 2, § 18705.1(b)(2). When that exception applies, and the business in question is a Fortune 500 business, as in this case, the materiality standard which applies is that contained in title 2, section 18705.1(c)(1) of the California Code of Regulations. According to that standard, the governmental decision will have a material effect on the business entity if any of the following is true:

- (A) The governmental decision will result in an increase or decrease in the business entity’s gross revenues for a fiscal year of \$10,000,000 or more; or
- (B) The governmental decision will result in the business entity incurring or avoiding additional expenses or reducing or eliminating existing expenses for a fiscal year in the amount of \$2,500,000 or more; or
- (C) The governmental decision will result in an increase or decrease in the value of the business entity’s assets or liabilities or \$10,000,000 or more.

In order to determine if the Council's decision on the Chevron station appeal will foreseeably result in any of the above listed effects, I spoke to Mr. Mark Eggiman of Chevron, who is Chevron's lead person on this project. According to Mr. Eggiman, it is not reasonably foreseeable that the decision on this item would have any of the above listed effects on Chevron. Although Mr. Eggiman did not want to reveal the exact value of this project to Chevron, because the information is proprietary, he was confident that the possible effects would not reach the levels of section 18705.1(c)(1).

Based on the foregoing, Councilmember Peters is not legally disqualified from participating in the Chevron conditional use permit appeal, and Councilmember Peters is not required to recuse himself from participating in the discussions and voting related to that decision.

CONCLUSION

Because the Council's decision on the Sorrento Hills Chevron station conditional use permit will not foreseeably have a material financial effect on Chevron, as that term is defined in title 2, section 18705.1(c)(1) of the California Code of Regulations, Councilmember Peters' indirect investment interest in Chevron is not a disqualifying financial interest for purposes of the decision in question. Councilmember Peters may discuss and vote on this matter, and is not required to disclose his financial interest on the record at the time this matter is heard by the Council.

CASEY GWINN, City Attorney

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By

Lisa A. Foster
Deputy City Attorney

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